

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of: Seiichi KAWANO

Confirmation No.: 7151

Serial No.: 10/722,084

Group Art Unit: 2629

Filed: November 25, 2003
PIZIALI

Examiner: Jeffrey J.

For: ADJUSTING AND CONTROLLING BRIGHTNESS OF A DISPLAY UNIT

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

This Appeal Brief is submitted in response to the Notice of Non-Compliant
Appeal Brief mailed on March 8, 2010.

Appeal Brief to the Board of Patent Appeals and Interferences

Applicant: Seiichi KAWANO.

Serial No.: 10/922,084

Filed: November 25, 2003

Docket No.: 4134P

Title: Adjusting and Controlling Brightness of a Display Unit

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REAL PARTY IN INTEREST

The real party in interest is Lenovo Incorporated.

RELATED APPEALS AND INTERFERENCES

There are no appeals, interferences, or judicial proceedings known to Appellant, the Appellant's legal representative, or Assignee, which may be related to, directly affect, be directly affected by, or have a bearing on the decision by the Board of Patent Appeals and Interferences in the pending appeal.

STATUS OF CLAIMS

Claims 1, 2 and 6-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 1, 2 and 6-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claims 1, 2 and 6-8 are rejected under 35 U.S.C. 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 2, 7, 8 are rejected under U.S.C. 102(e) as being anticipated by Megied et al. (US 6,556,253 B1)(“Megied”).

Claims 1, 2, 7, 8 are rejected under U.S.C. 102(b) as being anticipated by Kidder et al. (US 5,822,599 A)(“Kidder”).

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Claims 1, 2 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Megied in view of Kidder.

Claims 1, 2 and 6-8 are being appealed.

STATUS OF AMENDMENTS

Claims 7 and 8 have been amended to correct corresponding lack of antecedent basis.

SUMMARY OF THE CLAIMED SUBJECT MATTER

On February 9, 2010, Examiner stated: "The summary of claimed subject matter fails to provide a concise explanation of each independent claim 1 and 8, which shall refer to the specification by page and line number."

Applicant herewith describes with particularity below how the Specification discloses the elements of claims 1 and 8.

The Specification discloses **a display gradation calculator to calculate a first display brightness** ["...display gradation calculating means for calculating display brightness...Specification page 6, lines 11-13] **in a first window** [...multi-window environment...Specification, page 12, line 16] **on a display unit** [...in a specific area of an image displayed on the screen of a display unit...Specification, page 6, lines 12-13].

The Specification further discloses **a brightness adjuster to adjust a screen display brightness of the display unit according to the first display brightness** [...brightness adjusting means for adjusting the screen brightness of

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the display unit according to the display brightness of the specific area...Specification, page 6, lines 13-15].

The Specification further discloses **wherein in response to a second application** [...motion picture playback software...Specification, page 19, line 3] **being displayed in a second window** [...multi-window environment...Specification, page 12, line 16] **on the display unit** [...in a specific area of an image displayed on the screen of a display unit...Specification, page 6, lines 12-13], **the display gradation calculator calculating a second display brightness of the second window** [...display gradation calculating means for calculating display brightness...Specification page 6, lines 11-13] **and the brightness adjuster adjusting the screen display brightness of the display unit** [...brightness adjusting means for adjusting the screen brightness of the display unit according to the display brightness of the specific area...Specification, page 6, lines 13-15] **according to a type of application of the second application**

[...motion picture playback software...Specification, page 19, line 3]. Please note, the type of application software is detected by the brightness controlling apparatus at page 5, lines 6-7.

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Claim 1 recites a brightness adjusting system. The system comprises a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit. The system also comprises a brightness adjuster to adjust a screen display brightness of the display unit according to the first display brightness. In response to a second application being displayed in a second window on the display unit, the display gradation calculator calculating a second display brightness of the second window, and the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application of the second application.

Claim 2 recites a display gradation calculator that calculates the first and second display brightness by converting a gradation of RGB elements in a draw signal of an image displayed in the specific area to a gray scale gradation.

Claim 6 recites that the first application comprises a word processing application or a spreadsheet application and the second application comprises an image processing application.

Claim 7 recites a window manager to detect a window in focus. In response to detecting that the second window is in focus, the display gradation calculator calculating the second display brightness, and the brightness adjuster adjusting the screen display brightness of the display unit according to the second display brightness.

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Claim 8 recites a brightness adjusting system. A display gradation calculating means calculates a first display brightness in a first application displayed in a first window on a display unit. A brightness adjusting means for adjusting a screen display brightness of the display unit according to the first display brightness. In response to a second application being displayed in a second window on the display unit, the display gradation calculating means calculates a second display brightness of the second window, and the brightness adjusting means adjusts the screen display brightness of the display unit according to a type of application of the second application.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellant requests review as to claims 1, 2 and 6-8 and their rejection under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Appellant requests review as to claims 1, 2 and 6-8 and their rejection under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Appellant requests review as to claims 1, 2 and 6-8 and their rejection under 35 U.S.C. 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Appellant requests review as to claims 1, 2, 7, 8 and their rejection under U.S.C. 102(e) as being anticipated by Megied.

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Appellant requests review as to claims 1, 2, 7, 8 and their rejection under U.S.C. 102(b) as being anticipated by Kidder.

Appellant requests review as to claims 1, 2 and 6-8 and their rejection under 35 U.S.C. 103(a) as being unpatentable over Megied in view of Kidder.

ARGUMENT

Claims 1, 2 and 6-8 are not properly rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 1, 2 and 6-8

Claim 1 recites a brightness adjusting system. The system comprises a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit. The system also comprises a brightness adjuster to adjust a screen display brightness of the display unit according to the first display brightness. In response to a second application being displayed in a second window on the display unit, the display gradation calculator calculating a second display brightness of the second window, and the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application of the second application.

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A. The Specification Complies With The Written Description Requirement

For First And Second Applications Displayed In First And Second

Windows As Recited In Claim 1

Examiner argues, without reasoning, that the Specification fails to provide written description of first and second applications being displayed in first and second windows. Appellant respectfully disagrees (Office Action dated 9/8/2009, pp. 3-4 and p. 21). The disclosure describes multiple types of applications being displayed, such as Adobe Reader (e.g., see Specification p. 18, II. 17) and motion picture playback software (e.g., see Specification p. 19, II. 3).

Additionally, the disclosure describes multiple windows being displayed (e.g., see Specification p. 12, In. 16; p. 13, II. 13-15; and p. 6, II. 4-5). Therefore, claim 1 and related claims 2 and 7 each comply with the written description requirement.

B. The Specification Complies With The Written Description Requirement

for Word Processing Application, Spreadsheet Application, And Image

Processing Application, As Recited In Claim 6

Examiner argues that the Specification fails to provide written description of word processing application, spreadsheet application, and image processing application (Office Action dated 9/8/2009, p. 4 and p. 21). Appellant respectfully disagrees. Appellant submits that word processor applications are disclosed (e.g., see Specification p. 20, II. 3-4). Spreadsheet applications are also disclosed (e.g., see Specification p. 20, I. 3). Finally, image processing software is described (e.g., see Specification p. 21, In. 12 – image display; and p. 20, In.

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10 – DVD motion picture playback). Therefore, claim 6 and related claim 8 both comply with the written description requirement.

Claims 1, 2 and 6-8 are not properly rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

C. The Specification Complies With The Enablement Requirement For First And Second Applications Displayed In First And Second Windows As Recited In Claim 1

Examiner also argues that the Specification fails to provide enablement for first and second applications being displayed in first and second windows (Office Action dated 9/8/2009, p. 5 and 21). Appellant respectfully disagrees.

The disclosure provides several illustrations of first and second applications in first and second windows (e.g., see Specification, p. 19, l. 18 – p. 20, l. 13).

Examples include a word processor having a bright display using information in the display driver or graphic chip to change the brightness (see Specification, p. 20, ll. 2-13). Furthermore, one of ordinary skill in the art clearly understands multi-window environments of an operating system. Therefore, claim 1 and related claims comply with the enablement description requirement.

D. The Specification Complies With The Enablement Requirement for Word Processing Application, Spreadsheet Application, And Image Processing Application, As Recited In Claim 6

Examiner argues that the Specification fails to provide enablement of word processing application, spreadsheet application, and image processing

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application because they are not mentioned in the Specification (Office Action dated 9/8/2009, p. 4 and p. 21). Appellant respectfully disagrees. As discussed above, word processor applications are disclosed (e.g., see Specification p. 20, II. 3-4), spreadsheet applications are also disclosed (e.g., see Specification p. 20, I. 3), and image processing software is described (e.g., see Specification p. 21, In. 12 – image display; and p. 20, In. 10 – DVD motion picture playback). Therefore, claim 6 and related claim 8 both comply with the enablement requirement.

Claims 1, 2 and 6-8 are not properly rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point and distinctly claim the subject matter which applicant regards as the invention.

E. The Term “Type” Is Not Indefinite, As Recited In Claim 1

Examiner argued that the term “type” in the phrase “type of application” renders the scope indefinite because one of ordinary skill of the art would be unclear as to what the term is intended to display (Office Action dated 9/8/2009, p. 7). Appellant respectfully disagrees. As discussed above, there are many instances in the Specification in which types of applications are discussed, with specific examples of types of applications. Types of applications discussed include word processor applications (e.g., see Specification p. 20, II. 3-4), spreadsheet applications (e.g., see Specification p. 20, I. 3), and image processing software (e.g., see Specification p. 21, In. 12 – image display; and p. 20, In. 10 – DVD motion picture playback). Moreover, claim 6 further delineates

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types of applications to include these applications. One of ordinary skill of the art would understand that type of application refers to a purpose for which the software is used. Therefore, claim 1 is not indefinite.

F. The Term “RGB” Is Not Indefinite, As Recited In Claim 2

Examiner argues that the term “RGB” in the phrase “gradation of RGB elements” renders the scope indefinite because one of ordinary skill of the art would be unclear as to what the term is intended to display (Office Action dated 9/8/2009, p. 7). Appellant respectfully disagrees. As discussed in the Specification, and as well known in the art, the term RGB refers to the combination of colors red, green and blue (see Specification, p. 14, ll. 15-16). One of ordinary skill in the art would understand the term RGB in the context of display pixels. Therefore, claim 2 is not indefinite.

G. The Term “Window” Does Not Omit Essential Elements, As Recited In Claim 7

Examiner argues that the term “a window” of claim 7 does not clearly indicate whether the limitation refers to “a first window” or “a second window” (Office Action dated 9/8/2009, p. 7). Appellant respectfully disagrees. The term “a window” refers to neither the first window or the second window as claimed, but merely to a window in focus. Subsequently, the window is identified as the first window or the second window in order to adjust a corresponding brightness. Therefore, claim 7 does not omit essential elements.

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H. The Term “The Display Brightness” Has Antecedent Basis, As Recited

In Claim 7

Examiner argues that the term “the display brightness” has insufficient antecedent basis (Office Action dated 9/8/2009, p. 8). Appellant has corrected the lack of antecedent basis by amending the phrase to “the screen display brightness.” Therefore, amended claim 7 has not lack of antecedent basis.

I. The Term “The Display Gradation Calculator” Has Antecedent Basis,

As Recited In Claim 8

Examiner argues that the term “the display gradation calculator” has insufficient antecedent basis (Office Action dated 9/8/2009, p. 9). Appellant has corrected the lack of antecedent basis by amending the phrase to “the display gradation calculating means.” Therefore, amended claim 8 has not lack of antecedent basis.

J. The Term “Type” Is Not Indefinite, As Recited In Claim 8

Examiner argued that the term “type” in the phrase “type of application” renders the scope indefinite because one of ordinary skill of the art would be unclear as to what the term is intended to display (Office Action dated 9/8/2009, p. 9). Appellant respectfully disagrees. As discussed above, there are many instances in the Specification in which types of applications are discussed, with specific examples of types of applications. Types of applications discussed include word processor applications (e.g., see Specification p. 20, II. 3-4),

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spreadsheet applications (e.g., see Specification p. 20, l. 3), and image processing software (e.g., see Specification p. 21, ln. 12 – image display; and p. 20, ln. 10 – DVD motion picture playback). One of ordinary skill of the art would understand that type of application refers to a purpose for which the software is used. Therefore, claim 8 is not indefinite.

Claims 1, 2, 7 and 8 are not properly rejected under U.S.C. 102(e) as being anticipated by Megied.

Claim 1 recites a brightness adjusting system. The system comprises a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit. The system also comprises a brightness adjuster to adjust a screen display brightness of the display unit according to the first display brightness. In response to a second application being displayed in a second window on the display unit, the display gradation calculator calculating a second display brightness of the second window, and the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application of the second application.

K. Megied Fails To Disclose A Brightness Adjuster Adjusting A Display

Brightness Of A Display Unit According To A Type Of Application Of A Second Application As Recited In Claim 1

Megied generally discloses, in a multi-window arrangement, calculating a light output attributable to each window (Abstract). When a predetermined

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threshold is exceeded in Megied, the light output is automatically reduced (Abstract). More specifically, Megied discloses

In step 300 of FIG. 3, the condition, voltage VBCL being larger than voltage VREF, is detected, that occurs when beam current ibeam becomes excessive and that results in the generation of signal VCOM of FIG. 2. When in step 300, the condition, voltage VBCL being greater than voltage VREF is detected, automatic loop control procedure in loop controller 117 for adjusting the contrast and/ or brightness is initiated, as shown in step 301.

Whereas Megied may disclose adjusting brightness in a window, claim 1 recites adjusting brightness in a window based on a type of application displayed in the window. As a result, different applications can receive different treatment, and have a more optimal display brightness for the type of application (e.g., a word processing application treated differently from an image processing application). On the other hand, Megied appears to treat each type of application the same.

However, Examiner argues that Megied discloses the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application in that one type of application is a bright application and another type of application is a dark application (see Office Action dated 9/8/2009, pp. 10-11; p. 24). Appellant respectfully disagrees. Examiner's argument, put another way, posits that a bright application is adjusted based on being of a bright type of application while a dark application is adjusted based on being of a dark type. Megied does not provide a basis for this argument, nor does the argument relate

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to the claim terms at issue. Examiner's argument confuses terminology in equating an application 'window' in Megied to an application 'type' in claim 1. Megied discusses application windows and related luminance (e.g, 1:59-60). On the other hand, Megied is silent with regard to types of application as would be understood by one of ordinary skill of the art and given the Specification (i.e., Specification discloses application types such as a word processing application or an image processing application).

Thus, Megied fails to teach or disclose the brightness adjustment based on application type of claim 1.

Claims 1 and 6-8 are not properly rejected under U.S.C. 102(b) as being anticipated by Kidder.

Claim 1 recites a brightness adjusting system. The system comprises a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit. The system also comprises a brightness adjuster to adjust a screen display brightness of the display unit according to the first display brightness. In response to a second application being displayed in a second window on the display unit, the display gradation calculator calculating a second display brightness of the second window, and the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application of the second application.

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L. Kidder Fails To Disclose A Brightness Adjuster Adjusting A Display

Brightness Of A Display Unit According To A Type Of Application Of A Second Application As Recited In Claim 1

Kidder generally discloses exclusively activating pixels in an active area of a computer display when a computer system is operating in a power management mode (Abstract). More specifically, Kidder states:

[I]f the computer system is currently in a power management mode, in step 306 the operating system determines the dimensions of the current active area displayed on the computer display. In one embodiment, the boundaries of the active area are defined by rows and columns of pixels displayed on the computer's display. Several factors can be taken into consideration when determining the boundaries of an active area. For example, the boundaries of the active area may be based on such factors as: the type of application being executed (e.g., word processing, spread sheet, graphics illustrator); the activities currently being executed by the application program; or preferences submitted by an operator of the computer system. (357:-4:3).

While Kidder may discriminate between an active area and an inactive area, claim 1 recites adjusting brightness in a window based on a type of application. Kidder fails to disclose treating an application of one type in the active area differently from an application of another type in the active area.

However, Examiner argues that Kidder discloses the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application in that the boundaries of the active area in Kidder can be based on a type of application (see Office Action of 9/9/2009, p. 24). Appellant respectfully

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disagrees. The boundaries merely identify the area of a display screen currently being used by an operator. Once the boundaries are identified in Kidder, pixels appear to be activated the same regardless of the type of application.

Thus, Kidder fails to teach or disclose the brightness adjustment based on application type of claim 1.

Claims 1, 2 and 6-8 are not properly rejected under 35 U.S.C. 103(a) as being unpatentable over Megied in view of Kidder.

Claim 1 recites a brightness adjusting system. The system comprises a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit. The system also comprises a brightness adjuster to adjust a screen display brightness of the display unit according to the first display brightness. In response to a second application being displayed in a second window on the display unit, the display gradation calculator calculating a second display brightness of the second window, and the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application of the second application.

M. The claim has limitations not taught by the references

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

As discussed above, both Megied and Kidder fail to teach or suggest a brightness adjuster adjusting a display brightness of a display unit according to a

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type of application of a second application, as recited in claim 1. Consequently, Megied and Kidder (either alone or in combination) cannot render claim 1 obvious.

N. Other Independent Claims

Claims 7 and 8 each incorporate limitations similar to those of claim 1.

Claims 7 and 8 are also allowable over Megied in view of Kiddler (either alone or in combination) for reasons corresponding to those set forth with respect to claim 1.

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CONCLUSION

For the above reasons, Appellants respectfully submit that the cited references neither anticipate nor render obvious claims of the pending Application. The pending claims distinguish over the cited references, and therefore, Appellants respectfully submit that the rejections must be withdrawn, and respectfully request the Examiner be reversed and claims 1-2 and 6-8 be allowed.

Respectfully submitted,
SAWYER LAW GROUP, P.C.

May 10, 2010

Date

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CLAIMS APPENDIX

1. (Previously Presented) A brightness adjusting system, comprising:
 - a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit; and
 - a brightness adjuster to adjust a screen display brightness of the display unit according to the first display brightness,

wherein in response to a second application being displayed in a second window on the display unit, the display gradation calculator calculating a second display brightness of the second window, and the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application of the second application.
2. (Previously Presented) The system according to claim 1, wherein the display gradation calculator calculates the first and second display brightness by converting a gradation of RGB elements in a draw signal of an image displayed in the specific area to a gray scale gradation
3. (Withdrawn) A method for brightness adjustment, the method comprising:
 - calculating a first display brightness in a first application displayed in a first window a display unit; and

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adjusting a display brightness of the of the display unit according to the

first display brightness,

wherein in response to displaying a second window on the display unit,

calculating a second display brightness of the second window, and

adjusting the display brightness of the display unit according to the

second display brightness.

4. (Cancelled)

5. (Withdrawn) The method according to claim 3, wherein calculating the

display brightness further comprises:

obtaining gradation information of one or more RGB elements in a color

displayed in the first window; and

converting the obtained gradation information of each RGB element to a

gray scale gradation to represent the brightness of each RGB

element.

6. (Previously Presented) The system according to claim 1, wherein the first

application comprises a word processing application or a spreadsheet

application and the second application comprises an image processing

application.

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7. (Previously Presented) The system according to claim 1, further comprising:

a window manager to detect a window in focus, and in response to detecting that the second widow is in focus, the display gradation calculator calculating the second display brightness, and the brightness adjuster adjusting the screen display brightness of the display unit according to the second display brightness.

8. (Previously Presented) A brightness adjusting system, comprising:

a display gradation calculating means for calculating a first display brightness in a first application displayed in a first window on a display unit; and

a brightness adjusting means for adjusting a screen display brightness of the display unit according to the first display brightness,

wherein in response to a second application being displayed in a second window on the display unit, the display gradation calculating means calculating a second display brightness of the second window, and the brightness adjusting means adjusting the screen display brightness of the display unit according to a type of application of the second application.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.